



provisions set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

This Consent Agreement and the accompanying Final Order (collectively referred to herein as the "CAFO") address violations by Respondent of AHERA and the federal regulations implementing AHERA as set forth at 40 C.F.R. Part 763 Subpart E, and resolve Complainant's civil claims against Respondent arising from the violations alleged herein.

## **II. General Provisions**

1. For the purpose of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
2. Except as provided in paragraph 1, above, Respondent neither admits nor denies the specific factual allegations and conclusions of law set forth in this CAFO.
3. Respondent agrees not to contest EPA's jurisdiction with respect to the execution of this CA, the issuance of the accompanying Final Order, or the enforcement of the CAFO.
4. For the purposes of this proceeding only, Respondent hereby expressly waives its right to a hearing on any issue of law or fact set forth in this CA and any right to appeal the accompanying Final Order.
5. Respondent shall not deduct for civil taxation purposes the civil penalty specified in this CAFO.
6. Section 22.13(b) of the Consolidated Rules of Practice provides that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a consent agreement and final order.
7. By signing this CA, Respondent certifies to EPA that, upon investigation and to the best

of its knowledge, the Facility is in compliance with the provisions of the Asbestos Hazard Emergency Response Act ("AHERA"), Subchapter II of TSCA, 42 U.S.C. §§ 2641-2656, and regulations promulgated thereunder.

8. Respondent consents to the issuance of this CAFO and agrees to comply with its terms.
9. Respondent shall bear its own costs and attorney's fees.
10. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations.
11. By signing and executing this CA, Respondent certifies that it has already spent one thousand sixty three dollars (\$1,063) since the Maryland Department of the Environment's ("MDE") June 2, 2008 inspection, for purposes of complying with Subchapter II of TSCA and the regulations promulgated thereunder, in accordance with § 207(a) of TSCA, 15 U.S.C. § 2647(a), and that Respondent has provided Complainant with all supporting cost documentation and information.
12. This CAFO shall apply to and be binding upon the EPA, Respondent, and the officers, directors, successors, and assigns of Respondent.

### **III. EPA's Findings of Fact and Conclusions of Law**

13. Complainant has determined that Respondent has violated requirements of TSCA and the federal regulations implementing AHERA set forth at 40 C.F.R. Part 763, Subpart E. In accordance with the Consolidated Rules of Practice as set forth at 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3), Complainant alleges the following findings of fact and conclusions of law.

14. Respondent is the "Local Education Agency" ("LEA") as that term is defined under Section 202(7) of TSCA, 15 U.S.C. § 2642(7) and 40 C.F.R. § 763.83, because it is the owner of a nonpublic, non-profit elementary, or secondary school building, including the Facility, and as such, is responsible for ensuring that the Facility is in compliance with the requirements of AHERA.
15. The Facility is a "school" as that term is defined at Section 202(12) of TSCA, 15 U.S.C. § 2642(12) and 40 C.F.R. § 763.83.
16. The Facility is a "school building" as that term is defined at Section 202(13) of TSCA, 15 U.S.C. § 2642(13) and 40 C.F.R. § 763.83.

COUNT 1

17. The allegations contained in Paragraphs 1 through 16 are incorporated herein by reference.
18. 40 C.F.R. § 763.85(a), requires that each LEA inspect each school building prior to use as a school for presence of asbestos-containing building materials ("ACBM"), sample suspected ACBM as needed, and note the location of any ACBM or suspected ACBM in the management plan.
19. On June 2, 2008, MDE's duly authorized inspector conducted an inspection at the Facility.
20. During the inspection, MDE's inspector discovered that there had not been an initial inspection conducted at the Facility, to determine whether there was any ACBM located at the Facility prior to use as a school.
21. By failing to conduct an initial ACBM inspection, Respondent violated 40 C.F.R. § 763.85(a) and Section 207(a)(1) of TSCA, 15 U.S.C. § 2647(a)(1).

COUNT II

22. The allegations contained in Paragraphs 1 through 21 are incorporated herein by reference.
23. 40 C.F.R. § 763.93(a) states that "if a [LEA] begins to use a building as a school after October 12, 1988, the [LEA] shall submit a management plan for the school to the Agency designated by the Governor prior to its use as a school."
24. During the June 2, 2008 inspection, MDE's inspector found that the Respondent began using the building housing the Facility as a school after October 12, 1988, and that the Respondent did not submit a management plan for the Facility to the Agency designated by the Governor of the State of Maryland prior to its use as a school.
25. By failing to submit a management plan for the Facility prior to its use as a school, the Respondent violated 40 C.F.R. § 763.93(a)(3) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

COUNT III

26. The allegations contained in Paragraph 1 through 25 are incorporated herein by reference.
27. 40 C.F.R. § 763.93(g)(4) states, in pertinent or part, that: "...at least once each school year, the [LEA] shall notify in writing, the parent, teacher, and employee organizations of the availability of management plans and shall include in the management plan a description of the steps taken to notify such organizations, and a dated copy of the notification."
28. During the June 2, 2008 inspection, the MDE inspector found that the Respondent failed to provide, at least once each school year, written notification of the availability of the Facility's management plan, to parent, teacher, and employee organizations, and to include

in the management plan a description of the steps taken to notify each such organization, and a dated copy of each such notification.

29. By failing to provide the annual written notification since the date the school began operating, Respondent violated 40 C.F.R. § 763.93(g)(4) and Section 207(a)(3) of TSCA, 15 U.S.C. § 2647(a)(3).

#### **IV. Settlement Recitation**

30. Based on the above Findings of Fact and Conclusions of Law, EPA concludes that Respondent is liable for a civil penalty pursuant to Section 207(a) of TSCA, 15 U.S.C. § 2647(a), for Respondent's TSCA violations. In full settlement of the violations alleged in this Consent Agreement, in consideration of each provision of this Consent Agreement and the accompanying Final Order, and pursuant to Sections 207(a) and (c) of TSCA, 15 U.S.C. § 2647(a) and (c), and other relevant factors, Complainant and Respondent have determined that a civil penalty of five thousand two hundred dollars (\$5,200) is appropriate.
31. The aforesaid assessed penalty is based upon EPA's consideration of a number of factors, including, but not limited to, the statutory factors set forth in Section 207(c) of TSCA, 15 U.S.C. § 2647(c), *i.e.*, the significance of the violation, the culpability of the violator, and the ability of the violator to continue to provide educational services to the community. These factors were applied to the particular facts and circumstances of this case with specific reference to EPA's *Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act* ("ERP"), dated January 31, 1989, adjusted for inflation pursuant to 40 C.F.R. Part 19.

32. Respondent certifies that it has spent one thousand sixty three (\$1,063) dollars since MDE's June 2, 2008 inspection to comply with Subchapter II of TSCA. Therefore, pursuant to sections 16(a)(2)(C) and 207(a) of TSCA, 15 U.S.C. §§ 2615(a)(2)(C) and 2647(a), EPA agrees to the remittance of one thousand sixty three (\$1,063) dollars of the civil penalty assessed against the Respondent.
33. Respondent consents to the assessment of a five thousand two hundred (\$5,200) dollar civil penalty with a cash component of four thousand one hundred and thirty seven (\$4,137) dollars.
34. Within thirty (30) calendar days after the effective date of this CAFO, Respondent shall pay the cash component of the civil penalty by cashier's or certified check, electronic wire transfer, Automated Clearinghouse, or online. All checks shall be made payable to "United States Treasury" and shall be mailed to the attention of US Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, PO Box 979077, St. Louis, MO 63197-9000. (Fedex and other non-U.S. Postal Service express mail deliveries shall be sent to U.S. Bank, 1005 Convention Plaza, Mail Station SL-MO-C2GL, St. Louis, MO 63101). All payments made by check shall reference the above case caption and docket number, TSCA-03-2010-0132. Questions regarding payments made by check should be directed to Natalie Pearson at 314-418-4087. All electronic wire transfer payments shall be directed to the Federal Reserve Bank of New York, ABA No. 021030004, Account 68010727, SWIFT address FRNYUS33, 33 Liberty Street, New York, NY 10045 (Field Tag 4200 of the Fedwire message should read "D 68010727 Environmental Protection Agency"). All

Automated Clearinghouse or REX payments shall be directed to United States Treasury REX/ Cashlink ACH Receiver ABA No. 051036706, Account 310006, Environmental Protection Agency, CTX Format Transaction Code 22 - checking. Physical location of U. S. Treasury facility is 5700 Rivertech Court, Riverdale, Maryland 20737. Questions regarding payments made through the Automated Clearinghouse should be directed to John Scmid at 301-887-6548 or REX, 1-866-234-5681. The online payment option can be accessed at [WWW.PAY.GOV](http://WWW.PAY.GOV) and by entering "sfo 1.1" in the search field. At the same time that any payment is made, copies of any corresponding check, or written notification confirming any electronic wire transfer, Automated Clearinghouse, or online payment shall be mailed to Lydia A. Guy, Regional Hearing Clerk (3RC00), U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029 and to Carolyn Bernota, Case Development Officer (3LC62), Land and Chemicals Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029.

35. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this Consent Agreement and Final Order shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will

not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a). The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

#### **V. Reservation of Rights**

36. This CAFO resolves only the civil claims for the specific violations alleged in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under Subchapter II of TSCA, 15 U.S.C. §§ 2641 to 2656, the regulations promulgated thereunder,

and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

**VI. Effective Date**

37. The effective date of this CAFO is the date on which the Final Order is filed with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

**VII. Execution**

The undersigned representative of Respondent certifies that he or she is fully authorized by Respondent to execute this Consent Agreement and to legally bind Respondent to this Consent Agreement.

**Respondent:**

July 2, 2010

Date

Janis L. Summers  
Clerk of Session  
Ms. Janis Summers, ~~Chief Executive~~  
Darnestown Presbyterian Church  
on behalf of the Session

**For Complainant:**

July 12, 2010

Date

Carolyn Bernota  
Carolyn Bernota, Enforcement Officer  
U.S. EPA, Region 3

Accordingly I hereby recommend that the Regional Administrator or his designee issue the Final Order attached hereto.

8/4/10

Date

Abraham Ferdas

Abraham Ferdas, Director  
Land and Chemicals Division

BEFORE THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Region III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

IN RE:

Darnestown Presbyterian Church  
15120(A) Turkey Foot Road  
Gaithersburg, MD 20878

Docket No: TSCA-03-2010-0132

Facility

**FINAL ORDER**

The undersigned accepts and incorporates into this Final Order by reference all provisions set forth in the foregoing Consent Agreement.

NOW, **THEREFORE, IT IS HEREBY ORDERED THAT**, pursuant to Sections 16 and 207 of the Toxic Substances Control Act ("TSCA"), 15 U.S.C. §§ 2615 and 2647, and 40 C.F.R. § 22.18(b)(3) of the Consolidated Rules of Practice, Respondent is assessed a civil penalty of five thousand two hundred dollars (\$5,200) with a cash component of four thousand one hundred thirty seven (\$4,137) dollars. In accordance with Section 207(a) of TSCA, 15 U.S.C. § 2647(a), one thousand sixty three (\$1,063) dollars of the civil penalty assessed against the Respondent is hereby remitted. The effective date of this Final Order is the date that it is filed with the Regional Hearing Clerk.

8/5/10  
Date



Renée Sarajian  
Regional Judicial Officer, U.S. Environmental  
Protection Agency, Region III